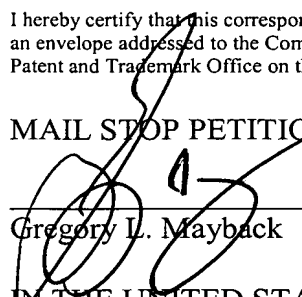


Docket No.: SYN-8311

CERTIFICATION OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

MAIL STOP PETITIONS

  
\_\_\_\_\_  
Gregory L. Mayback

October 6, 2004

Date

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applic. No. : 10/728,385 Confirmation No.: 8814  
Inventor : Kevin Smith et al.  
Filed : December 5, 2003  
Title : Tissue Retractor and Method for Using the Retractor  
TC/A.U. : to be assigned  
Examiner : to be assigned  
Customer No.: 24131

Hon. Commissioner for Patents  
Alexandria, VA 22313-1450

REPLY TO NOTICE OF INCOMPLETE  
NONPROVISIONIAL APPLICATION, AND  
PETITION UNDER 37 C.F.R. §1.10 and 1.8(b)

Hon. Commissioner for Patents  
Alexandria, VA 22313-1450

10/14/2004 FFANAI2 00000048 10728385  
01 FC:1460 130.00 DP

Sir:

The facts leading to this petition are as follows:

Applicants received two *Notices of Incomplete Nonprovisional Application* dated September 10, 2004 in the above-identified application, copies of which are enclosed. According to the notices, applicants had allegedly neither filed any drawings with the application papers filed by Express Mail on December 5, 2003, nor an executed declaration.

However, applicants did indeed file the application with drawing sheets 1-40 illustrating Figs. 1-41. The application was mailed to the Patent Office by Express Mail on December 5, 2003,

and filed in the Patent Office on December 5, 2003. The transmittal page of the application papers bore a mailing certificate under 37 CFR §1.10, which was properly executed on that date and which lists all items attached to the application texts including 40 sheets of formal drawings. Applicants also submitted the executed declaration on January 6, 2004.

As corroborating evidence therefor, and in accordance with Rules 1.10 and 1.8(b), enclosed herewith are copies of:

**I. Mailing of December 5, 2003 (Rule 1.10)**

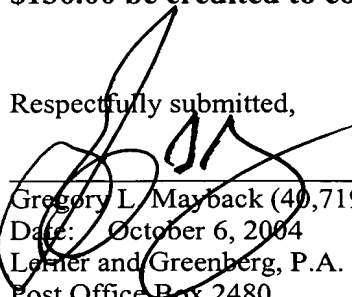
- the postcard which serves as prima facie evidence of receipt in the PTO of all items listed thereon on the date stamped thereon by the PTO
- the entire mailing of December 5, 2003
- a declaration by Michael Burns, who signed the Express Mail certificate of the mailing of December 5, 2003
- the pertinent page of counsel's outgoing mail log
- the petition fee in the amount of \$130.00

**II. Mailing of January 6, 2004 (Rule 1.8(b))**

- the entire mailing of January 6, 2004
- the postcard of January 6, 2004
- a declaration by Gregory L. Mayback
- the pertinent page of counsel's outgoing mail log

Since applicants have provided sufficient evidence that the drawings as well as the executed declaration were indeed deposited on December 5, 2003 by Express Mail, and January 6, 2004 by first class mail, respectively, **applicants respectfully request that the application be accorded a filing date of December 5, 2003, and that the petition fee in the amount of \$130.00 be credited to counsel's deposit account # 12-1099.**

Respectfully submitted,



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Gregory L. Mayback (40,719)

Date: October 6, 2004

Lerner and Greenberg, P.A.

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Tel: (954) 925-1100

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SYN-8311



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applic. No. : 10/728,385 Confirmation No.: 8814  
Inventor : Kevin Smith et al.  
Filed : December 5, 2003  
Title : Tissue Retractor and Method for Using the Retractor

DECLARATION  
TO ACCOMPANY PETITION UNDER 37 C.F.R. §1.10

I, Mike Burns, hereby declare that:

- ❖ I am employed at the law offices of Lerner and Greenberg, P.A. as a mail clerk
- ❖ my duties include picking up mail from, and taking mail to the US Post Office
- ❖ I have first-hand knowledge that the enclosed mailing was sent by Express Mail to the Patent and Trademark Office on the date shown
- ❖ I personally signed the mailing certificate
- ❖ I have reviewed the pertinent pages of the outgoing mail log for December 5, 2003, and the pages show that the enclosed papers were indeed mailed on that date.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Mike Burns  
Mike Burns



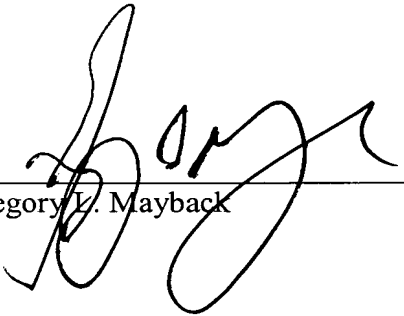
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applic. No. : 10/728,385 Confirmation No.: 8814  
Inventor : Kevin Smith et al.  
Filed : December 5, 2003  
Title : Tissue Retractor and Method for Using the Retractor

DECLARATION  
TO ACCOMPANY PETITION UNDER 37 C.F.R. §1.8(b)

I, Gregory L. Mayback, hereby declare that:

- ❖ I have first-hand knowledge that the enclosed mailing was sent by first class mail to the Patent and Trademark Office on the date shown
- ❖ I personally signed the mailing certificate
- ❖ I have reviewed the pertinent pages of the outgoing mail log for January 6, 2004, and the pages show that the enclosed papers were indeed mailed on that date.

  
\_\_\_\_\_  
Gregory L. Mayback